

REMARKS

Claims 1-12 are currently pending in this application. Reconsideration is respectfully requested in light of the above claim amendments and following remarks.

The Examiner rejected claims 1-12 under 35 U.S.C. §112, first paragraph as allegedly failing to comply with the written description requirement. The Examiner alleges that the step of or means for adjusting the relative amplitudes of the portions of the cross-chamber cardiac signal corresponding to atrial signals and the portions corresponding to ventricular signals so as to yield an emulated surface EKG using only the single cardiac signal with the adjusted relative amplitudes in combination with the other elements or steps was not described in the original disclosure. More specifically the Examiner alleges that the use of "only" is a negative limitation or exclusionary proviso that must have basis in the original disclosure. Applicants respectfully traverse this rejection.

It is well settled that in rejecting a claim under the first paragraph of 35 U.S.C. 112 for lack of adequate descriptive support, it is incumbent upon the examiner to establish that the originally-filed disclosure would not have reasonably conveyed to one having ordinary skill in the art that an appellant had possession of the now claimed subject matter. Wang Laboratories, Inc. v. Toshiba Corp., 993 F.2d 858, 26 USPQ2d 1767 (Fed. Cir. 1993). Adequate description under the first paragraph of 35 U.S.C. 112 does not require literal support for the claimed invention. In re Herschler, 591 F.2d 693, 200 USPQ 711 (CCPA 1979); In re Edwards, 568 F.2d 1349, 196 USPQ 465 (CCPA 1978); In re Wertheim, 541 F.2d 257, 191 USPQ 90 (CCPA 1976). Rather, it is sufficient if the originally-filed disclosure would have conveyed to one having ordinary skill in the art that an appellant had possession of the concept of what is claimed. In re Anderson, 471 F.2d 1237, 176 USPQ 331 (CCPA 1973).

Applicants submit that the originally filed disclosure clearly supports generating an emulated surface EKG using only the single cardiac signal with the adjusted relative amplitudes. For example, FIGS. 16-21 of the disclosure and the corresponding description disclose an amplitude adjustment-based technique wherein amplitudes of portions of a single internal cardiac signal are selectively adjusted to yield an emulated

surface EKG. These embodiments explicitly state that only a single signal is used to generate an emulated surface EKG by distinguishing between signals portions of the signal that are generated in the atria and signals generated in the ventricles. The disclosed system and method then selectively adjust the amplitudes of the atrial and ventricular portions so as to emulate a surface EKG. (see paragraph [0087-0093]).

Applicants therefore submit that the originally filed disclosure would have conveyed to one having ordinary skill in the art that Applicants had possession of a system and method to generate an emulated surface EKG using only a single signal because the disclosure includes multiple embodiment that do just that. Accordingly, Applicants respectfully request that this rejection be withdrawn.

The Examiner rejected claim 1 as conflicting with claim 6 of Patent Application Serial No. 10/736,111. Applicants have cancelled claim 6 of Patent Application Serial No. 10/736,111 and respectfully request that this rejection be withdrawn.

The Examiner provisionally rejected claims 1-12 on the ground of non-statutory double patenting as being unpatentable over claims 1 and 6-16 of co-pending U.S. Patent Application Serial No. 10/736,111. Applicants will file a terminal disclaimer to obviate this rejection in the last to issue application, be it the present application or Serial No. 10/736,111.

In light of the above remarks, it is respectfully submitted that the application is in condition for allowance, and an early notice of allowance is requested.

Respectfully submitted,


Date


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CUSTOMER NUMBER: 36802